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Michigan Senate Insurance Com Hearings  
May 22, 2012 at 2:30 pm  
Room 100 Farnum Building,  
123 W. Allegan Street, Lansing MI 48933

**SB 1116. The New Michigan Standard of Care:  
Good Faith, Reasonable Belief and Best interest of the Patient**

My name is Katie Dama Jaskolski, and I am currently a teacher at Wexford Montessori Magnet School. I hold a Bachelor of Arts from Michigan State University. I also obtained my Masters in Curriculum from St. Catherine University in Minneapolis, MN.

It has recently come to my attention that our Michigan legislature is considering changing the laws pertaining to medical malpractice cases that would lower or eliminate the care standard that doctors must exercise. I was shocked to hear this, and more importantly, it brought up a very bad memory that I think you should hear before making any decision to change Michigan laws.

In 1999, I was a junior at Sexton High School, in Lansing and was ranked nationally in gymnastics. At the time I was being recruited by Michigan State University, Rutgers University, Brown University, Air Force Academy, Western Michigan University and Eastern Michigan University. Unfortunately, while performing one of my routines on the uneven bars, I suffered an injury to my elbow; I tore an elbow ligament. As a result, I sought treatment with a physician employed by Michigan State University.

Unbeknownst to me at that time, Michigan law shielded MSU doctors with a defense of "governmental immunity." As I came to understand, those doctors who enjoyed the defense of "governmental immunity" meant that in order for me to prove my case against my physician, it was necessary for me to prove that during the surgery my doctor's conduct was grossly negligent. As we now know, and my case seems to be a good example, this burden is impossible to prove, notwithstanding the horrible mishap the doctor committed during my surgery. As the Michigan Court of Appeals stated when they affirmed the dismissal of my case, in order to prove gross negligence, I had to prove, "that defendant simply did not care about my health and safety."<sup>1</sup> Even the fact that my surgeon had never before performed this procedure was not enough.

The accepted treatment for my elbow's torn ligament was surgery. I was told by my surgeon that he would remove a tendon in my wrist called the "palmaris longus tendon," and use it as a graft to repair the torn ligament in my elbow. During my surgery, my surgeon failed to realize that I was one of the many people that sometimes do not have a palmaris longus tendon in the wrist. Not only did he fail to recognize this fact, but he thereafter misidentified my median nerve as the tendon. He then removed the entire median nerve in my forearm and used my nerve to graft the torn ligament in my elbow. When I awoke from surgery, I soon discovered that everything that the median nerve controlled (i.e., hand, fingers, strength, etc.) would not function, and there was nothing that could be done to salvage the normal use of my left hand and arm.

As a result of the doctor's misconduct, my life was changed forever. My entire gymnastics career was over. I could no longer compete at any level, and as would be

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<sup>1</sup> *Dama v Dietzel DO*, Mich App, Unpublished, April 7 2005, No 260110.

expected, I also lost all scholarship opportunities. When I filed my lawsuit against my surgeon, in order to maintain any valid cause of action against him, his conduct had to be determined to be grossly negligent. In my eyes, and in the eyes of many, there was nothing more gross than the conduct that my surgeon displayed during my surgery. Unfortunately, I lost my case because the judge made a determination based on the law at the time that my surgeon did not intend to hurt me. While the judge concluded that the doctor was negligent, unfortunately, she did not find him to be grossly negligent. I, like many, mistakenly thought that gross negligence meant "really bad medicine". I quickly learned that was not true and gross negligence has a very specific legal definition.

Within months after my case was decided, I was told that the law had changed and there was no longer a need to prove gross negligence. MSU doctors would now be held to the same standard as all other doctors throughout the state. Although I had been permanently injured by my surgeon, and I was unable to obtain any legal remedy for this clearly negligent treatment, I was pleased to hear that the law had been changed.

In addition to the physical injuries, the anger and frustration that comes with unfairness in the law is also a permanent injury.

My attorneys have informed me that there is now another bill pending in Lansing (SB 1116) to change the test for competent care from a national standard of what other reasonable and ordinary physicians would do under the same circumstances to a test of whether the physician acted in, "... a reasonable and good-faith belief that their conduct is both well founded in medicine and in the best interests of the patient." This, based on

my experience, would be as bad as the gross negligence standard. I have no doubt that my surgeon had a "good- faith belief" that the surgery was the best choice for me; it was certainly the recognized treatment at the time. And, I'm sure he thought it was in my "best interest". I have no doubt that he did not intend to permanently injure my arm. However, as you can see from my case, this is no test for competent care.

Being a victim of such laws, this is something that I cannot comprehend. I cannot understand why any legislature would want to pass a law that would, in essence, give all doctors a license to commit malpractice on their patients. This will not make medicine safer, but hazardous to those who need the best care possible. If this is true, and if this law were to pass, I only hope that what happened to me doesn't happen to you or a loved one.

Sincerely,

Katie Dama Jaskolski